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I am responding to the proposed amendments to Rules 3.973 et seq as published in the March 2003 issue of the Michigan Bar Journal, pp 66-67.

Alternative B offers the judge the option of directing that a jury determine the truth of the allegations contained in a supplemental petition alleging additional or new neglect charges "if the allegations of additional abuse or neglect are of such a nature that fairness to the respondent or the interests of justice require" a jury's review. This option is, in my humble opinion, unworkable and unnecessary.

Currently, the vast majority of FIA drafted petitions only involve the actions of one custodial parent because either the other parent is out of the picture, is unknown, or the parties are divorced. In these cases, the petition only mentions the name of the noncustodial parent as a putative or legal parent. There are no affirmative allegations of neglect or abuse made regarding the noncustodial parent. It is only after the case has been adjudicated and noncustodial parents have been contacted that the agency and the court learn about THAT parent's own problems with substance abuse, emotional instability, financial instability, lack of parenting skills, and the like.

A case such as this often moves to termination after services have been offered and sufficient progress has not been made. Any allegations in the supplemental petition regarding that noncustodial parent are therefore NEW or ADDITIONAL allegations that FIA and the prosecutor believe merit termination on the noncustodial parent.

If the court rule is changed to say that the noncustodial parent is entitled to a jury determination regarding the truth of the new or additional allegations, it would:
(1) create additional delays in obtaining permanence for the children because the jury trials would have to be scheduled between the permanency planning or regular review hearing and the termination hearing,
(2) create not only uncertainty for the bench and bar but also additional opportunities for appeal regarding an abuse of discretion because the proposed statutory language is ambiguous at best, and
(3) run the risk of creating jury demands in every case where the termination petitions state with specificity the concerns that have been fleshed out by orders of disposition entered AFTER the initial adjudication.

For example, the initial petition alleges that child was injured in a

suspicious manner and came to school repeatedly with lice. The agency would routinely request during disposition that the mother undergo a psychological evaluation. If that evaluation revealed an Axis I or Axis II diagnoses that required therapy and medication but the mother refused to obtain emotional stability in these areas, the agency could subsequently request termination under 19b(3) as a result. With the new proposed Alternative B, the mother could claim that the termination petition's allegations regarding her failure to address her emotional instability constitute NEW or ADDITIONAL allegations requiring a jury determination because NOTHING in the initial petition (which was the basis for the adjudication) spoke of her emotional instability.

Thus, the conditions that led to the adjudication, i.e., failure to protect and neglected physical care, are different than the allegations in the termination petition, i.e., emotional instability. The mother could then request a jury trial prior to termination under Alternative B. This result would be ridiculous when throughout the neglect proceedings and review hearings we have been trying to address these allegedly "NEW" or "ADDITIONAL" concerns.

The same result could occur for the noncustodial parent referenced above who was only mentioned in the initial petition as a putative parent.

I believe that the standards of review already in place sufficiently address the concerns that Alternative B seek to address, i.e., that there is sufficient notice and adjudication with respect to allegations that could and do lead to eventual termination.

Thank you for your consideration.

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